

Written Remarks for the Record

The Senate Select Committee on Intelligence November 13, 2007 Dr. Amy B. Zegart Associate Professor

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Mr. Chairman, Mr. Vice Chairman, distinguished Members of the Select Committee on Intelligence, it is an honor to appear before you today to discuss congressional oversight of U.S. intelligence agencies.

My name is Amy Zegart. I am an Associate Professor in the School of Public Affairs at the University of California, Los Angeles (UCLA). For more than a decade, I have been researching and writing about organizational problems in U.S. intelligence agencies. My newest book, *Spying Blind* (Princeton University Press, 2007), examines why the CIA and FBI failed to adapt to the rise of terrorism after the Cold War. Before my academic career, I served on the National Security Council staff and advised Fortune 500 companies about organizational effectiveness as a McKinsey & Company management consultant.

When I last appeared before this committee in August of 2004, the 9/11 Commission had just released its report and intelligence reform was in the air. Three years later, and six years after the worst terrorist attacks in American history, progress has been halting and disappointing.

Congressional oversight of intelligence is vital to American national security. And it has been broken for years. Without substantial changes to the current system, intelligence reforms will fail.

Mr. Chairman, my remarks cover three main points:

- Why oversight matters
- Enduring problems
- What can be done

The bottom line: Oversight weaknesses and possible remedies have been known for a long time. The critical challenge now is not so much inventing new ideas, but implementing the ones we already have.

WHY OVERSIGHT MATTERS

U.S. Intelligence agencies have never been more important. The spread of weapons of mass destruction, the information revolution, and the rise of transnational terrorist networks have created an unprecedented asymmetric threat environment. For the first time in history, great power does not bring security; it is the weak that threaten the strong.

As CIA Director Michael Hayden recently noted, during the Cold War the Soviet Union was easy to find but its most deadly forces—tanks, ICBMs, and troops—were hard to kill. Today the situation is reversed: our principal terrorist enemies are easy to kill but hard to find. Successful defense requires penetrating and stopping the adversary before he ever gets to his target battlefield, not defeating him with overwhelming force once the battle begins. More than ever before, intelligence has become our nation's first and last line of defense.

Robust congressional oversight is crucial to an effective intelligence system because it guards against two dangers. The first is that intelligence agencies will become too powerful, violating the liberties, laws, and values that Americans hold dear. The second danger is that intelligence agencies will become too weak to keep Americans safe. Good congressional oversight ensures that intelligence agencies get the resources they need, provides strategic guidance to deploy those resources effectively, and proactively evaluates what works and what doesn't so that agencies can improve and adjust their collection and analysis before disaster strikes.

Today, U.S. intelligence agencies are confronting substantial challenges in both areas. Many both inside and outside the Intelligence Community are gravely concerned that intelligence agencies are overreaching—engaging in warrant-less surveillance programs and interrogation methods that are legally questionable and morally troubling. Many also worry that intelligence agencies are under-performing, that they are not adapting fast enough to the demands of a post-9/11 world.

The executive branch cannot, should not, and must not go it alone. Ensuring that U.S. intelligence agencies are powerful enough but not too powerful requires nonpartisan and vigorous oversight by Congress.

#### ENDURING PROBLEMS

Congressional oversight of intelligence has always been problematic. For the first thirty years of the CIA's existence, oversight consisted of a few senior legislators not asking questions and not wanting answers. As Senator Leverett Saltonstall (R-Mass.) noted in 1956, "It is not a question of reluctance on the part of the CIA officials to speak to us....Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a Member of Congress and as a citizen, would rather not have." Between 1947 and 1974, more than 150 legislative proposals to reform this oversight system were defeated, nearly all of them by overwhelming majorities. It took revelations that intelligence agencies were assassinating foreign leaders and spying on Americans before Congress finally established the Select Intelligence Committees.

Although the committees were a substantial improvement, deficiencies persisted. Perhaps nowhere was the system's weakness more apparent than in the failed efforts to overhaul executive branch intelligence agencies before 9/11. In 1992 and again in 1996, this committee and

its House counterpart pressed for sweeping intelligence reforms. Both times, bills were torpedoed by the Defense Department and members of the armed services committees, who stood to lose their own turf and power.

My research found that between 1991 and 2001, twelve major unclassified studies examined U.S intelligence and counter-terrorism capabilities, issuing more than 500 recommendations for reform. Most of the reports found congressional oversight to be a big part of the problem. Recommendations included streamlining the splintered and overlapping committee jurisdictions in intelligence and homeland security, combining intelligence authorizing and appropriating powers, and ending intelligence committee term limits to enhance the expertise of members. None of these recommendations were adopted before 9/11. In fact, the only organization in the U.S. intelligence system that failed to implement a single reform from all these reports wasn't the CIA, NSA, or FBI. It was Congress.

Despite the 9/11 Commission's dire warning that congressional oversight was "dysfunctional" and vital to intelligence reform, two key problems remain: too much fragmentation and not enough expertise.

Fragmented Jurisdictions: Creating a System Prone to Error and Inefficiency As you know well, intelligence oversight is fragmented and uncoordinated across too many committees. Governor Kean and Congressman Hamilton have noted that even now, the Department of Homeland Security reports to 86 different congressional committees and subcommittees. While this may be the extreme case, other intelligence agencies also face multiple oversight committees—chief among them, judiciary, armed services, and appropriations.

A system that splintered is naturally prone to error and inefficiency.

Individual programs—even crucial ones—can and do fall between the cracks because oversight can always be seen as somebody else's job. In the late 1990s, for example, no congressional committee undertook a serious examination of the FBI's struggling counterterrorism reform efforts. Why? In large part, because intelligence committees thought it was a judiciary issue and the judiciary committees thought it belonged in intelligence.

What's more, fragmented jurisdictions make it unlikely that any one panel will have an integrated view of an agency's activities and the appropriate cross-programmatic tradeoffs involved. Multiple committees are also more likely to give contradictory guidance and overload managers with too many uncoordinated hearings and reporting requirements. And savvy executive branch officials can play committees off one another.

In particular, the split between the intelligence authorization and appropriations committees has allowed executive branch agencies to game the system. As the press has publicly reported, this committee in recent years has repeatedly tried to kill expensive satellite programs only to have other committees reverse decisions after pressure from the Pentagon and other allies. One intelligence official called this kind of bureaucratic maneuvering the "Two-parent approach: If mom says no, go to dad."

Separating authorizations from appropriations is a longstanding and revered congressional practice. But in the realm of intelligence, this division has become increasingly unworkable.

#### Not Enough Expertise

Intelligence activities are complex, highly technical, and shrouded in secrecy. Unlike all other policy issues, intelligence has no natural interest group constituencies capable of gathering independent information, alerting the public, or holding elected officials' feet to the fire. These factors make the intelligence oversight learning curve especially high, Members' oversight service extraordinarily valuable, and staff capabilities essential. Unless overseers know what to ask, they won't get the information they need to make intelligence agencies effective.

Although the Senate took the very important step in the 108th Congress of ending term limits for this committee, the experience differential between the SSCI and other Senate committees remains striking. For example, Senator Warner has served on the armed services committee for 29 years. Chairman Levin has served for 28 years. If my calculations are correct, that's four times longer than the longest-serving member of this committee. Notably, the House intelligence committee still has term limits for its members, even though the 9/11 Commission and a number of other studies during the 1990s recommended abolishing them.

Staff capabilities are also critical and in need of augmentation. The Government Accountability Office (GAO) currently lacks full authority to investigate all components of the Intelligence Community, particularly the CIA. Others have suggested bolstering oversight committee staff by creating a new congressional support agency with nonpartisan, cleared staff that could provide both classified and unclassified analyses of important oversight issues to Congress. The Inspector General system also offers an under-utilized mechanism to provide nonpartisan, independent information to Congress about waste, fraud, and abuse within and, importantly, across intelligence agencies.

#### WHAT CAN BE DONE

All reforms necessarily involve tradeoffs; there is no one ideal solution. The history of intelligence reform, however, suggests two guiding principles for improving congressional oversight.

Principle #1: Focus less on developing new ideas and more on implementing the ones we already have.

For sixty years, turf and politics have stacked the deck against robust intelligence oversight. As the 9/11 Commission noted, few things are more difficult than rearranging committee jurisdictions. And as this committee knows well, overseeing U.S. intelligence agencies has always been a hard and largely thankless task that takes precious time away from all the other issues that concern and benefit constituents more. Few voters care about the nitty-gritty aspects of the FBI's analyst program or the number of Pashto speakers at the CIA.

The issues are often complicated and the effects on the daily lives of Americans are usually indirect and unseen. No intelligence reform ever won a landslide election.

But turf and politics must be overcome. The "Implementing the 9/11 Commission Recommendations Act" passed last summer tackled just about everything except congressional oversight. Congress can do better. American lives depend on it.

This hearing is an important step forward. But success will require continued leadership, commitment, bipartisanship, and a relentless focus on implementation.

#### Principle #2: Pick the Low-Hanging Fruit

Dramatic improvements require dramatic changes. Nevertheless, some important improvements can be accomplished without new legislation, turf wars, or rule modifications. This "low-hanging fruit" involves improving informal coordination and technical capabilities to make the most of existing oversight activities. These include:

- Holding regular staff meetings across relevant Senate committees and between House and Senate intelligence committees to better coordinate hearing schedules and activities.
- Instituting periodic leadership meetings of the House and Senate intelligence committees to share information, improve coordination, and enhance strategic planning.
- Integrating technology systems so that various intelligence oversight staff with appropriate clearances can share information more easily.

Mr. Chairman, I'd like to conclude by thanking this committee not only for holding this hearing to address the critical issue of intelligence oversight, but for doing so in open session. While I fully realize that security considerations often require closed sessions, there is no more powerful force for change than an engaged public.

Thank you.